

neither addresses or satisfies the objectives of the Applicant's invention at all, which is summarized in the preamble of claim 1 for "A carpet assembly with shock absorbing properties..." The Wentworth invention makes no mention of, and has no application, in the art of shock absorbing floor systems.

The examiner has rejected claims 1-9 under 35 U.S.C. §103(a) as being unpatentable over Wentworth in view of Emerson, 3,577,894. Emerson teaches the use of a "permeable layer of cushion material" to achieve a cushion effect. In col. 3, lines 67-70, Emerson states that the cushion 17 is "highly permeable to permit water to rapidly pass through to the channels 39 therebelow." A "highly permeable" layer of material is by definition opposite to a closed cell material as taught by the applicant. This does not comport with closed cell foam plastic and therefore in no way suggests the Applicant's invention. Emerson discloses a playing court which resembles turf in feel and in which the upper surface dries extremely rapidly to permit the court to be used immediately after a rain. The turf feel is derived by placing the Emerson invention on stabilized soil comprising sharp sand or fine crushed stone, which is then treated with a soil stabilizing agent. Inspection of Figures 8 and 9 of Emerson '894 shows that the thickness of cushion 17 is of a thickness only slightly thicker than the carpet 18, whereas applicant's mat is several times as thick as the carpet.

As to claim 3, the requirement is for the mat to be 1-1/8 inch thick. This is outside the limitations contemplated by Wentworth, who said the foamed resin can be up to 0.5 inch thick. (Emphasis added) The 1-1/8 inch thickness is 225% of the limitation set forth by Wentworth. Applicant submits that the teaching of a foamed resin that can be up to 0.5 inch teaches away from the applicant's invention, in that applicant's 1-1/8 inch limitation is far outside the "up to 0.5 inch" teaching of Wentworth.

As to claim 4, there is no reference or suggestion regarding impact attenuation, and certainly no reference to an ASTM impact attenuation specification. The claimed invention possesses improved properties not expected by the prior art.

Applicant amends claim 5 to distinguish from the 0.5 inch teaching in Emerson by providing that the mat is greater than 0.5 inch thick.

This places the minimum thickness above the limitation taught by Wentworth and thus distinguishes the claim from Wentworth.

Claim 6 requires portable sections of the carpet assembly, not taught in the cited art. Emerson teaches the use of adhesive to permanently adhere the bottom of the carpet over an entire court surface, not to join the edges of portable sections secured contiguously together. Emerson, therefore is a permanent installation, rather than being portable sections that can be put out and taken up as required. Wentworth also teaches a carpet system and makes no mention of any portability. Therefore, there is no mention of portability in any of the cited art. Portability is neither contemplated nor possible in the cited art, and therefore is not analogous to detachably attaching portable sections of the carpet together.

Applicant amended claim 11 to overcome the 35 U.S.C. §112 rejection, by requiring a hook and loop fastener rather than 3M Velcro®.

Nowhere in the cited art is there any suggestion as to detachably attaching multiple sections of carpet mat assembly into a unit.

When applying 35 U.S.C., "the references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination." (MPEP §2141). Considering Emerson and Wentworth together fails to suggest the desirability and thus the obviousness of making the combination. Applicant further submits that "as a whole" the invention would not have been obvious to the hypothetical person of ordinary skill in the art at the time the invention was made. (MPEP §2142).

Applicant submits that he is experiencing commercial success with several users of the carpet system according to this invention. Applicant is not aware of commercial success, nor even the availability, of any systems according to the Wentworth or Emerson patents. Enclosed is a single sheet brochure, a 10 page catalog from U. S. Games where the invention is offered on page 3, and a U. S. Games catalog where the invention is offered on page 90.

Applicant submits that the above amendments add no new matter to the application and will now render this application in condition for allowance.

If any questions arise, please call Agent at 972-217-1717, or 972-217-0109.

Respectfully submitted,

By Morgan L. Crow Date: May 14, 1999
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